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7 Attorneys for Defendant/Counter-Plaintiff,
 8 KEATING DENTAL ARTS, INC.

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12 SOUTHERN DIVISION

13 JAMES R. GLIDEWELL DENTAL
 14 CEAMICS, INC. dba GLIDEWELL
 LABORATORIES,

15 Plaintiff,

16 v.

17 KEATING DENTAL ARTS, INC.

18 Defendant.

19 AND RELATED COUNTERCLAIMS.
 20

) Civil Action No.
 SACV11-01309-DOC(ANx)

) **FIRST SUPPLEMENTAL
 EXPERT REPORT OF DR.
 DAVID EGGLESTON**

) Honorable David O. Carter

1 I am submitting this report as a supplement to the report I submitted on
2 September 15, 2012 ("Opening Report").

3 **I. SUPPLEMENTAL INFORMATION RELIED UPON**

4 Since submitting my Opening Report, I have learned additional
5 information that further supports my opinions set forth in that report. I have
6 reviewed the deposition transcripts of Jim Shuck (head of Advertising and
7 Marketing at Glidewell, testifying as a designated witness for Glidewell), Dr.
8 Michael DiTolla (dentist employed by Glidewell for clinical education and
9 marketing purposes), and Mr. Robin Carden (head of Research & Development
10 at Glidewell). These three people were deposed and provided testimony after I
11 submitted my opening report. I have also learned additional information by
12 reviewing documents Glidewell produced after I submitted my first report,
13 including documents that I understand Glidewell produced on the day of Mr.
14 Shuck's deposition. I have also learned additional information through review
15 of documents, inspection of commercial products, and online research prompted
16 by the information I learned from reviewing Glidewell's witness testimony and
17 recently produced documents.

18 **II. SUPPLEMENTAL SUPPORT FOR MY OPINIONS**

19 **A. A bruxer is a generic term used to describe a person with the**
20 **condition of bruxism.**

21 Mr. Shuck, Dr. DiTolla, and Mr. Carden each testified that bruxer is a
22 generic term for a person with the condition of bruxism. (*See, e.g.,* Shuck Depo.
23 Tran. (Rough) at 26; DiTolla Depo. Tran. (Rough) at 106, 159-60; Carden
24 Depo. Tran. (Rough) at 131-32.)

25
26 **B. The mark BRUXZIR is phonetically equivalent to the term "bruxer."**

27 Mr. Shuck, Dr. DiTolla, and Mr. Carden each pronounced bruxer and
28

1 BruxZir identically at their depositions. (*See, e.g.*, Shuck Depo. Tran. (Rough)
 2 at 27; DiTolla Depo. Tran. (Rough) at 160; Carden Depo. Tran. (Rough) at
 3 129.)

4
 5 **C. The primary indication for an all zirconia crown, or bruxer crown, is**
 6 **patients with bruxism.**

7 Mr. Shuck, Dr. DiTolla, and Mr. Carden each testified that Glidewell's
 8 BruxZir product was released with a primary indication of patients with
 9 bruxism. (*See, e.g.*, Shuck Depo. Tran. (Rough) at 33-34; DiTolla Depo. Tran.
 10 (Rough) at 72-74; Carden Depo. Tran. (Rough) at 133-34.) Dr. DiTolla testified
 11 that he contributed to creating the marketing slogan "More Brawn Than Beauty"
 12 to communicate an honest message that the focus of the crown is on its strength
 13 and not its aesthetics. (DiTolla Depo. Tran. (Rough) at 64-66.)

14 Glidewell's marketing materials (produced after my first report) state that
 15 the primary indication for a BruxZir crown is a patient with bruxism. By way of
 16 example:

17 When we [Glidewell] launched BruxZir solid zirconia crowns and
 18 bridges in 2009 our intention was to provide a monolithic zirconia
 19 restoration indicated for bruxers and grinders as an aesthetic
 20 alternative to posterior metal occlusal PFMs and full cast metal
 21 restorations.

22 (*See* Ex. 8, p. 2; Ex. 13 p. 2.) *See also* Ex. 15 ("Ideal for bruxers who have
 23 destroyed natural teeth or previous dental restorations").

24 I have reviewed an email from Dr. DiTolla to Mr. Shuck sent back in
 25 June 2009 regarding the proposed name "BruxZir" for Glidewell's crowns made
 26 entirely of zirconia. Based on my review of that email, it is apparent to me that
 27 Dr. DiTolla had a favorable opinion of the name in part because it would be
 28 memorable to dentists in conveying the function of the crown (i.e., a very strong

1 crown for use with bruxers) and its composition (made of zirconia).

2 Dr. DiTolla testified during his deposition that the BruxZir product is
3 indicated for patients with limited vertical space. (DiTolla Depo. Tran. (Rough)
4 at 163.) From my experience, patients with limited vertical space are rare
5 compared to patients that are bruxers.

6

7 **D. Dentists and other professionals in the dental industry refer to an all**
8 **zirconia crown as a “bruxer crown” or alternatively a “bruxzir**
9 **crown.”**

10 During the depositions of Glidewell’s witnesses, the following documents
11 were presented as examples of dental professionals using the phrase “bruxer
12 crown” as a generic term for an all zirconia crown:

- 13 • A Food and Drug Administration Adverse Event Report. (Ex. 45.)
- 14 • DaniDental Studio prescription form. (Ex. 47.)
- 15 • Trachsel Dental prescription form. (Ex. 46.)

16 Dr. DiTolla testified that he believed that some of these references were
17 examples of a generic use of “bruxer crown.” (DiTolla Depo. Tran. (Rough) at
18 184-87.) In other instances, the witnesses testified that the appearance of
19 “bruxer” in these documents reflected a misspelling of BruxZir. (DiTolla Depo.
20 Tran. at (Rough) 170-71; Carden Depo. Tran. (Rough) at 238-39.) I disagree.
21 Dental professionals readily recognize the term bruxer as a reference to patients
22 with bruxism (or products for such patients) and not as a misspelling of
23 Glidewell’s mark BruxZir.

24 I have reviewed further documents that support my view that dental
25 professionals use bruxer crown, or bruxzir crown (a creative spelling with “zir”
26 for zirconia), as a generic reference to an all zirconia crown. Examples include:

- 27 • Cosmetic Dentistry of San Antonio’s webpage entitled “Dental
28 Crowns,” the website states, “At Cosmetic Dentistry of San

1 Antonio we offer the latest technology including a patented
 2 crown called a “Bruxer” crown (Bruxism is the habitual grinding
 3 of teeth, typically during sleep and a Bruxer is a person who does
 4 this). This is an all ceramic, natural looking crown that can be
 5 placed on back teeth.” ([http://cosmeticdentistryofsa.com/dental-](http://cosmeticdentistryofsa.com/dental-implants/san-antonio-restorative-dentistry/dental-crowns/)
 6 [implants/san-antonio-restorative-dentistry/dental-crowns/](http://cosmeticdentistryofsa.com/dental-implants/san-antonio-restorative-dentistry/dental-crowns/)).

- 7 • A Pittman Dental Lab post on twitter.com stating, “Get our custom
 8 Bruxer bur block to aid in all your Bruxer Crown adjustments!”
 9 (<http://twitter.com/PittmanLab/status/9266696359514112>).
- 10 • R-Dent Dental Laboratory in Memphis, Tennessee has a press
 11 release available at biznet-tenn.com which states, “We are glad to
 12 introduce our new full-contour zirconia bruxer crown, R-brux.”
 13 (<http://www.biznet-tenn.com/firms/6111792/>).
- 14 • The question “What is Bruxer Crown?” is asked in a forum on
 15 informe.com. The answer provided states, “As we know there
 16 are different kinds of crowns available now a days. Metal crowns,
 17 ceramic crowns even they have different types. Bruxer is one of
 18 them. Bruxer is Solid Zirconia is a monolithic solid zirconia
 19 crown restoration with no porcelain overlay.” (grammatical errors
 20 in original). ([http://dentalimplant.informe.com/forum/](http://dentalimplant.informe.com/forum/announcement-f5/what-is-bruxer-crown-t10.html)
 21 [announcement-f5/what-is-bruxer-crown-t10.html](http://dentalimplant.informe.com/forum/announcement-f5/what-is-bruxer-crown-t10.html))
- 22 • The websites of the approximately 180 “authorized” labs listed on
 23 Glidewell’s bruxzir.com webpage each market and sell their own
 24 individual zirconia crowns that they refer to as “BruxZir” crowns.
- 25 • The approximately 180 “authorized” labs typically have their own
 26 individualized prescription forms for dentists to fill out to order
 27 restorations. Those individualized prescription forms commonly
 28 identify their all zirconia restorations generically, such as

1 “Zirconia” (*see, e.g.*, Rx forms for Dentek Dental Laboratory;
 2 ROE Dental Laboratory; TLC Dental Laboratory; Wornson-
 3 Polzin Dental Laboratory), “Full Zirconia” (*see, e.g.*, Rx form for
 4 Ziemek Laboratories), “Full Contour Zirconia” (*see, e.g.*, Rx
 5 forms for Iverson Dental Laboratories and Parkway Dental Lab),
 6 “Full Crown,” “Ceramics” (*see, e.g.*, Rx form for Great
 7 Southwest Dental Laboratory), “All Ceramic” (*see, e.g.*, Rx forms
 8 for Eclipse Dental and Elegant Dental Laboratories), or
 9 “Monolithic Zirconia” (*see, e.g.*, Rx forms for Las Vegas Dental
 10 Studio and Lord’s Dental Studio). Some of these “authorized”
 11 prescription forms refer to their all zirconia restorations as
 12 “Bruxzir” (with a lower case z) (*see, e.g.*, Rx forms for Midtown
 13 Dental Laboratory and R-dent Dental Laboratory), or
 14 “BRUXZIR” (all capital letters) (*see, e.g.*, Rx forms for Artistic
 15 Dental Lab; Continental Dental Laboratory; DentalLab.com).

16
 17 Dental professionals view bruxzir as a reference to a crown made of
 18 zirconia, whether or not the crown was made by Glidewell and whether or not
 19 the crown was made from zirconia made by Glidewell. The letters “zir” are
 20 commonly used in the dental industry to refer to zirconia. Examples for this use
 21 of “zir” include:

- 22 • Drake Dental sells Zir-Cast dental restorations made of zirconia.
- 23 • Burbank Dental Lab sells Zir-Max restorations made of zirconia.
- 24 • Distinctive Dental Studio has used Zir-Tech for zirconia
- 25 restorations.
- 26 • Ivoclar Vivadent has been using ZirCAD for their zirconia
- 27 products.
- 28 • Ivoclar Vivadent has been using ZirPress for ceramic ingots to be

1 pressed over a zirconia base.

- 2 • Ivoclar Vivadent has been using ZirLiner for bonding materials for
- 3 zirconia products.
- 4 • Axis Dental has been using the name Zir-Cut for their zirconia
- 5 polisher.
- 6 • CDL Technologies has been using ZirBlock for dental products.
- 7 • Tanaka Dental Products has been using ZirColor and ZirChrome
- 8 for colorants for zirconia dental restorations.
- 9 • Kastle Mills has been using ZirCrown to refer to zirconia
- 10 restorations.
- 11 • Pittman Dental Laboratory has been using ZirCAM for a zirconia
- 12 restoration.
- 13 • Diadem Precision Technology has been using Diazir for their
- 14 zirconia restorations and stain and glaze kits for zirconia products.
- 15 • Henry Schein has been using Zirlux for zirconia restorations.
- 16 • California Dental Arts has been using ZirFit for zirconia dental
- 17 restorations.
- 18 • Noritake has been using Zirprime for pre-sintered zirconia.
- 19 • Somer Dental Labs refers to their zirconia restorations as "Full
- 20 Contour Zir."
- 21 • Technics Dental Laboratory sells a Tech/ZIR FC zirconia
- 22 restoration.
- 23 • Safco Dental Supply Co. sells specialty burs for cutting zirconia
- 24 called NTI Zir-Cut diamonds.
- 25 • Dental City sells specialty burs for cutting zirconia called Zir-Cut
- 26 Diamond FG.
- 27 • Smile Line USA sells a Zir.Care multipurpose stone for grinding
- 28 zirconia.

- BioMet3i sells ZiReal zirconia dental posts.
- Suppliers of presintered zirconia sell the material in blocks often referred to as “zir block.”

The term “brux” is commonly used in the dental industry to refer to products for use with bruxers. Examples for this use of “brux” include:

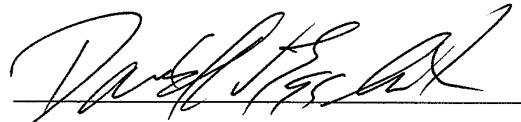
- Archtek Bruxing Splint
- BruxThetix
- GPS BruxArt
- Brux XXX
- BruxCure
- Brux Checker
- Dr. Brux
- Brux-eze
- BruxCare
- Bruxguard
- ZerisBRUX

I have further reviewed physical samples of some of the above products including Dr. Brux, Brux Checker, BRUX-EXE, BruxGuard, and Archtek Bruxing Splint.

I have reviewed emails sent by dental professionals to Glidewell (produced by Glidewell after my opening report) that further support my opinion that dentists view bruxzir as a generic reference to an all zirconia crown.

10/12/12

Date



Dr. David W. Eggleston

PROOF OF SERVICE

I am a citizen of the United States of America and I am employed in Irvine, California. I am over the age of 18 and not a party to the within action. My business address is 2040 Main Street, Fourteenth Floor, Irvine, California. I am readily familiar with the firm's business practices for the collection and processing of correspondence for mailing, and that mail so processed will be deposited the same day during the ordinary course of business.

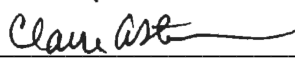
On October 15, 2012, I caused the within FIRST SUPPLEMENTAL EXPERT REPORT OF DR. DAVID EGGLESTON to be served on the parties or their counsel shown below, by placing it in a sealed envelope addressed as follows:

Via Electronic and First Class Mail:

Leonard Tachner, Esq.
LEONARD TACHNER, A Professional Law Corp.
17961 Sky Park Circle, Suite 38-E
Irvine, CA 92614-6364
Email: ltachner@aol.com

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 15, 2012 at Irvine, California.



Claire A. Stoneman

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